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No. 655

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

CHRYSLER MOTORS CORPORATION and CHRYSLER CORPORATION, corporations of the State of Delaware,
Petitioners,

v.

BUONO SALES, INC., REZZA MOTORS, INC., LICCARDI MOTORS, INC., ENGLEWOOD MOTORS, INC., MILLBURN MOTOR SALES CO., LICCARDI MOTOR SALES, INC., RICHARD MOTORS, INC., LABRIOLA MOTORS, INC. and MAIN AUTO SALES, INC.,
Respondents.

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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Petitioners make the following points with respect to respondents' brief:

1. Respondents assert that it is "most improbable" that numerous suits will be filed by dealers as a result of the decision of the Court of Appeals (Brief, p. 6). As of the time of the filing of the petition for certiorari suits were already pending in three jurisdictions. Since then additional actions have been instituted so that petitioners are now faced with one or more suits

in each of six United States district courts located in four different circuits as well as in the New York Supreme Court. Petitioners have reason to believe that additional actions in an indeterminate number can be anticipated in other jurisdictions.

2. Respondents make an incorrect statement in the course of their attempt to distinguish *E. H. McClintock Co.* v. *Truxel Sales & Service,* 297 Mich. 284, 297 N.W. 493 (1941). The petition for certiorari (page 9) pointed out that the contractual language that the Michigan Supreme Court held in *McClintock* to constitute a complete defense was substantially duplicated in the dealer agreement here in suit. Respondents assert that the court in *McClintock* determined that this language "did not refer to the issue of discontinuance or termination." (Brief, pp. 5-6) Nothing in the *McClintock* opinion even intimates such a determination; in fact the claim asserted in *McClintock* was for damages arising out of a termination.

3. In discussing the alleged cause of action for tortious interference respondents characterize the Dodge Division's promotional brochure as "announcing the discontinuance of DeSoto." (Brief, pp. 6-7) This is incorrect and distorts the nature and content of the brochure. The brochure (D. App. 24b) did not even mention the discontinuance of the DeSoto or make any reference to DeSoto dealers. It was mailed in March and April of 1961, several months after the discontinuance, to owners of 1956-1959 DeSotos and similar brochures were mailed, as part of the same Dodge promotional campaign, to owners of certain models of Chevrolet, Ford, and American Motors automobiles (P. App. 38a). These brochures were nothing more than laudatory commendations by the Dodge Division

of the Dodge products and of the Dodge dealers and were well within the realm of lawful competition which is the antithesis of malice or the doing of an intentional act without justification or excuse, something which respondents did not even plead, much less prove. In their brief respondents have not even attempted to reconcile the holding below with the New Jersey decisions that explicitly declare that a trader's claim that he is better than his competitors is not unlawful. See, *e.g., Louis Kamm, Inc.* v. *Flink,* 113 N.J.L. 582, 175 A. 62, 67 (E. & A. 1934); *Van Horn* v. *Van Horn,* 56 N.J.L. 318, 28 A. 669, 670 (E. & A. 1894).

CONCLUSION

It is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

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